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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,877	03/23/2001	Randall C. Arnold	AUGA15000005	7377

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TERRANCE A. MEADOR  
GRAY CARY WARE & FREIDENRICH, LLP  
4365 EXECUTIVE DRIVE  
SUITE 1100  
SAN DIEGO, CA 92121-2133

EXAMINER

SCHOPFER, KENNETH G

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 06/03/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/815,877

Applicant(s)

ARNOLD ET AL.

Examiner

Kenneth G Schopfer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 34-71 is/are pending in the application.
- 4a) Of the above claim(s) 38, 39, 41-43, 48-53, 55, 59, 60, 62-64, 69 and 71 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-37, 40, 44-47, 54, 56-58, 61, 65-68 and 70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 34 is rejected under 35 U.S.C. 102(b) as being anticipated by Hunter (USPN 4930174).
3. Referring to claim 34, Hunter teaches all of the limitations of this claim. Hunter discloses an inflatable device having two inlets 25 each with a plug. The inflation of the device using only one inlet teaches a method for controlling the airflow in the device including the steps of providing a plug placed in and retained in an inlet port and introducing airflow into the device via another inlet port where the plug prevents egress of air.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 34-37, 40, 44-47, 54, 56-58, 61, 65-68, and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berke et al. (USPN 5304213) in view of McCord (USPN 4043474).
6. Referring to claim 34, Berke et al. teach all of the limitations of this claim except for the plug. Berke et al. disclose an inflatable device having two inlets 73 and 74, each with a pull-seal

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label closing. The inflation of the device using only one inlet teaches a method for controlling airflow through the device having the steps of providing a closure for one inlet and introducing air into the other inlet where the closure prevents egress of air. McCord teaches a plug 30 for closing an inlet to a container. It would have been obvious to one of ordinary skill in the art at the time of invention to use a plug as in McCord in the device of Berke et al. as an effective means to prevent egress of air.

7. Referring to claims 35-37, 40, 44, 46, 54, 56-58, 61, 65, 67, and 70, Berke et al. teach all of the limitations of these claims except for the plug. Berke et al. teach an apparatus for warming a person including:

- a) an inflatable cover in a transverse disposition for warming the chest of a person (figure 7);
- b) two inlet ports, 73 and 74, each including a first sheet of flexible material, 75 and 76, attached to the cover and a hole adapted to receive the nozzle of an air hose; and
- c) pull-seal labels removably received over the inlets to close them.

McCord teaches a resilient plastic plug 30 for closing an inlet to a container. The plug includes a planar central body 34 and a pair of opposing, curved extensions, 42 and 44, that are coplanar with the central body and are receivable within the opening of a container (figure 8). It would have been obvious to one of ordinary skill in the art at the time of invention to include a plug as in McCord in the device of Berke et al. as an effective means to repeatedly close and open an inlet port of the device.

8. Referring to claims 45 and 66, the combined device of Berke et al. and McCord teaches all of the limitations of this claim as described above except for the plug being made of wood

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pulp material. It would have been obvious to one of ordinary skill in the art at the time of invention that the use of a wood pulp material for the plug as in the claims represents an unpatentable design choice over the plug of McCord that would not change the ability of the plug to effectively close an inlet port.

9. Referring to claims 47 and 68, the combined device of Berke et al. and McCord teaches all of the limitations of this claim as described above except for the plug having two pairs of opposing extensions. It would have been obvious to one of ordinary skill in the art at the time of invention to include another pair of opposing extensions on the plug of McCord in order to provide an even more secure closing means for the inlet port.

#### ***Response to Arguments***

10. Applicant's arguments filed March 24, 2003 have been fully considered but they are not persuasive.

11. The applicant argues that Hunter does not disclose a plug according to claim 34. The pumping mechanisms 10 and inlets 25 prevent the inlet and outlet of air when it is not desired. Thus, they can be adequately described as plugs for the device.

12. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it generally known in the art that both a plug and a seal are effective means to close

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in inlet/outlet of an inflatable device. McCord teaches a device including an airtight plug for repeatedly opening and closing a seal. It would have been obvious to one of ordinary skill in the art at the time of invention that the plug of McCord could have been used to seal an inlet in blanket of Berke et al. after the pull-seal has been removed.

13. The applicant argues that there would be no reasonable expectation of success if the devices were combined because the plug of McCord would prevent the folding of the collar of the inlets of Berke et al. However, it would have been obvious that if the plug of McCord were used in the device of Berke et al. it would not need to be placed in the inlet ports while the device is folded..

14. The applicant argues that the device of Berke et al. may not be described as an inflatable cover or an inflatable blanket. The abstract of Berke et al. clearly states that there is “a build up of pressurized air in the chamber” of the device, indicating that the airflow into the device causes it to inflate.

15. Finally, the applicant argues that because the device of Berke et al. is disposable there would be no need to repeatedly close and open an inlet port of the device. However, it would have been obvious to one of ordinary skill in the art at the time of invention that during the use of the device on a single patient in response to the status of the patient it may be necessary to plug and unplug one side of the device while the other is connected to an air flow system in order to connect or disconnect a second air flow system.

***Conclusion***

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth G Schopfer whose telephone number is 703-305-2649. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 703-308-0994. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

KS

May 22, 2003

  
LINDA C. M. DVORAK  
SUPERVISORY PATENT EXAMINER  
GROUP 3700